UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

PHILIP C. TOBIN,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 98-237-B
	)	
UNIVERSITY OF MAINE SYSTEM, ET AL.,	)	
	)	
Defendant	)	

ORDER

Presently before the Court for consideration are four motions filed by Plaintiff: Motion to Strike Affirmative Defense #19 (Docket #11); Motion to Strike Affirmative Defense #15 (Docket #13); Motion for More Definite Statement (Docket #20); Motion for More Definite Statement (Docket #23). The Court has reviewed Plaintiff's motions and both parties' responsive pleadings, and DENYS Plaintiff's motions for the reasons explained below.

Motions to Strike Affirmative Defenses

I. Standard

Plaintiff moves to strike two of Defendants' affirmative defenses pursuant to Federal Rule of Civil Procedure 12(f). The Rule provides that a court may "order stricken from any pleading any insufficient defense." Fed. R. Civ. P. 12(f).

As this Court has stated previously, motions to strike defenses are disfavored. *Nelson v. Univ. Of Maine Sys.*, 914 F. Supp. 643, 646-47 (D. Me. 1996); *Coolidge v. Judith Gap Lumber Co.*, 808 F. Supp. 889, 893 (D. Me. 1992). In fact, the prevailing rule is that a court should grant a motion to strike a defense "only if the defense is legally insufficient, and presents no question of law or fact that the court must resolve." 2A *Moore's Federal Practice*, ¶12.21[3] at 12-210 (1995). A defense is "legally insufficient" if it appears the movant "would succeed despite any stated facts that could be proved in support of defense." *F.D.I.C. v. Eckert*, 754 F. Supp. 22, 23 (E.D.N.Y. 1990).

II. Discussion

a. Motion to Strike affirmative defense # 19

Plaintiff asks the Court to strike Defendants' affirmative defense 19 which reads, "The Plaintiff has failed to mitigate damages, if any." Answer to Plaintiff's Amended Complaint and Affirmative Defenses of All Defenses (Docket # 8). Plaintiff argues because Defendants did not attach any factual averments to support the defense, the defense must be legally insufficient. The Court disagrees. The purpose in asserting an affirmative defense is to "give the opposing party notice of the defense and a chance to develop evidence and offer arguments to controvert the defense." *Wolf v. Reliance Standard Life Ins. Co.*, 71 F.3d 444, 449

(1st Cir. 1995); *See also* 5 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* §1274 (1990) ("An affirmative defense may be pleaded in general terms and will be held to be sufficient, and therefore invulnerable to a motion to strike, as long as it gives plaintiff fair notice of the nature of the defense."). The Court is satisfied that the affirmative defense gives Plaintiff sufficient notice that Defendant will raise the defense of mitigation of damages where appropriate, as for example, on Plaintiff's claims for compensatory damages. Further, the Court is satisfied that the defense is legally sufficient because Defendants may later prove facts to support the defense. For the reasons stated above, Plaintiff's motion to strike the affirmative defense is DENIED.

b. Motion to Strike affirmative defense #15

Plaintiff asks the Court to strike Defendants' affirmative defense 15 which reads, "Plaintiff has no property interest in admission to the University of Maine School of Law under the due process clause." Answer to Plaintiff's Amended Complaint and Affirmative Defenses of All Defenses (Docket # 8). Plaintiff maintains that the defense is legally insufficient because under *Goss v. Lopez*, 419 U.S. 565 (1975), and state law, 20-A Me. Stat. Rev. Ann. §10902 (6), (7), Plaintiff is entitled to a legal education that cannot be denied without due process of law. Unfortunately for Plaintiff, two points undermine his assertion. First, the Maine

statute he cites does not create an entitlement. It merely states that all state citizens are eligible for higher education. Second, *Goss* does not stand for the proposition that all persons are entitled to higher education. In *Goss*, the Court found that students threatened with a 10-day suspension from a public high school were entitled to due process before being suspended from the school. *Goss*, 419 U.S. at 573. The Court, citing Ohio law, determined that in Ohio students had legitimate claims of entitlement to public education. *Id.* Here, Plaintiff was denied admission to a law school in Maine, a situation entirely different than the one presented to the Supreme Court in *Goss*. Accordingly, Plaintiff's motion must be DENIED.

Plaintiff's Motions for a More Definite Statement

I. Standard and Discusion

Plaintiff has filed two motions for a definite statement pursuant to Federal Rule of Civil Procedure 12(e). The rule provides:

> If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. . . .

As the rule makes clear, a rule 12(e) motion is appropriate when a responsive pleading is required. Here, Plaintiff's motions for a more definite statement are

directed at Defendants' Answer with Affirmative Defenses, a pleading that does not require a responsive pleading. *See Armstrong v. Synder*, 103 F.R.D. 96, 100 (E.D. Wis. 1984) ("[W]here a responsive pleading is not required or permitted, a motion under Rule 12(e) for a more definite statement is inappropriate."). Accordingly, the Court DENYS both of Plaintiff's motions for a more definite statement.

Conclusion

For the reasons delineated above, Plaintiff's motions (Docket #s 11, 13, 20, 23) are DENIED.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on March 3, 2000.